

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

RECEIVED

CITY OF PHENIX CITY, ET AL,

Plaintiffs,

vs.

MCKENZIE TANK LINES, INC.,

Defendant.

2006 DEC -1 P 2:17

DEBRA P. HACKETT, CLK

U.S. DISTRICT COURT

MIDDLE DISTRICT ALA

CIVIL ACTION NO.

3:06-cv-1074-MHT

TO :

James P. Graham, Jr., Esq.
P.O. Box 3380
Phenix City, Alabama 36868
Attorney for the City of Phenix City

Kenneth L. Funderburk, Esq.
P.O. Box 1268
Phenix City, Alabama 36868
Attorney for Russell County, Alabama

NOTICE OF REMOVAL

PLEASE TAKE NOTICE THAT Defendant McKenzie Tank Lines, Inc. (hereinafter "McKenzie"), hereby notices the removal of the above-styled action filed on or about October 16, 2006, in the Circuit Court of Russell County, Alabama (Civil Action File No. CV 06-357), to the United States District Court for the Middle District of Alabama, Eastern Division, pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, and 42 U.S.C. § 9613(b), showing the Court the following:

1. On or about October 16, 2006, the City of Phenix City and Russell County, Alabama (collectively "Plaintiffs") commenced the above-styled action by filing a Summons and Complaint against McKenzie as shown in the attached Exhibit "A"

2. No pleading or other actions have been taken by McKenzie in the Circuit Court for Russell County.

3. This Notice of Removal is filed within 30 days of receipt through service (or otherwise) of a copy of the Complaint on McKenzie.

4. In the Complaint, Plaintiffs purportedly assert claims for recovery arising under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq. ("CERCLA") and under the Motor Carrier Act of 1980, 49 U.S.C. §§ 10101 et seq. ("Motor Carrier Act").

5. The district courts of the United States have original jurisdiction over the above-styled action under 28 U.S.C. § 1331 because the Complaint purports to state claims for relief arising under the laws of the United States, specifically CERCLA and the Motor Carrier Act.

6. In addition, district courts of the United States have original jurisdiction over the above-styled action under 42 U.S.C. § 9613(b) because this controversy arises under CERCLA.

7. Under 28 U.S.C. § 1441(a), this Court has removal jurisdiction over this case because the United States District Court for the Middle District of Alabama, Eastern Division, is the district court for the district and division embracing Russell County, Alabama, the place where the above-styled action has been pending until this removal.

8. Copies of all process, pleadings, and orders served upon McKenzie in the above-styled action are attached hereto as Exhibit A and incorporated by reference herein, in accordance with 28 U.S.C. § 1446(a).

9. Pursuant to 28 U.S.C. § 1446(d), McKenzie has sent written notice of removal to the Plaintiffs' attorney and has filed a copy of this Notice of Removal with the Clerk of Circuit Court of Russell County.

10. McKenzie will file an Answer or other appropriate pleading or motion within the time limit established by law or as duly extended by this Court. McKenzie does not with the filing of this Notice of Removal waive but rather specifically reserves the right to raise in such Answer or other appropriate pleading or motion any and all defenses available to it at law or in equity, including insufficiency of process, insufficiency of service of process, lack of personal jurisdiction, lack of subject-matter jurisdiction, improper venue, and inconvenience of the forum.

WHEREFORE, the premises considered, McKenzie respectfully submits that this matter has been properly removed from the Circuit Court of Russell County, Alabama and requests that this Court take proper jurisdiction of this matter in the United States District Court for the Middle District of Alabama, Eastern Division.

Done this 1st day of December, 2006.


RICHARD E. BROUGHTON (BRO043)

OF COUNSEL:

Ball, Ball, Matthews & Novak, P.A.
2000 Interstate Park Drive
Suite 204
Montgomery, AL 36109
Telephone: (334) 387-7680
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SMITH, GAMBRELL & RUSSELL, LLP

Stephen E. O'Day
Georgia Bar No. 549337
Andrew M. Thompson
Georgia Bar No. 707319
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Georgia Bar No. 071507

Suite 3100, Promenade II
1230 Peachtree St., N.E.
Atlanta, GA 30309-3592
Telephone: (404) 815-3500
Facsimile: (404) 815-3509

Counsel for Defendant
McKenzie Tank Lines, Inc.

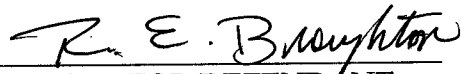
CERTIFICATE OF SERVICE

I certify that the foregoing document has been served upon:

James P. Graham, Jr., Esq.
P.O. Box 3380
Phenix City, Alabama 36868
Attorney for the City of Phenix City

Kenneth L. Funderburk, Esq.
P.O. Box 1268
Phenix City, Alabama 36868
Attorney for Russell County, Alabama

by placing copy of same in the United States Mail, first class, postage prepaid and properly addressed on this 1st day of December, 2006.


COUNSEL FOR DEFENDANT

LIT\974012.1

Exhibit A

AVSO300

ALABAMA JUDICIAL DATA CENTER
RUSSELL COUNTY

SUMMONS

CV 2006 000357.00
ALBERT L. JOHNSON

IN THE CIRCUIT COURT OF RUSSELL COUNTY
CITY OF PHENIX CITY ET AL VS MCKENZIE TANK LINES INC D/B/A MCKENZIE
SERVE ON: (D001)

MCKENZIE TANK LINES INC D/B/A
DAWSON MCGOUGH, REG. AGT.
631/DIAZ STREET
MOBILE, AL 36610-2463

PLAINTIFF'S ATTORNEY
FUNDERBURK KENNETH L
1313 BROAD STREET
POST OFFICE BOX 1268
PHENIX CITY, AL 36868-1268

TO THE ABOVE NAMED DEFENDANT:

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS, YOU OR YOUR ATTORNEY ARE REQUIRED TO MAIL OR HAND DELIVER A COPY OF A WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT TO THE PLAINTIFFS ATTORNEY(S) SHOWN ABOVE OR ATTACHED:

THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN 30 DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGEMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT. YOU MUST ALSO FILE THE ORIGINAL OF YOUR ANSWER WITH THE COURT BELOW.

- () TO ANY SHERIFF OR ANY PERSON AUTHORIZED BY EITHER RULES 4.1(B)(2) OR 4.2(B)(2) OR 4.4(B)(2) OF THE ALABAMA RULES OF CIVIL PROCEDURE: YOU ARE HEREBY COMMANDED TO SERVE THIS SUMMONS AND A COPY OF THE COMPLAINT IN THIS ACTION UPON DEFENDANT.
- () THIS SERVICE BY CERTIFIED MAIL OF THIS SUMMONS IS INITIATED UPON THE WRITTEN REQUEST OF _____ PURSUANT TO RULE 4.1(C) OF THE ALABAMA RULES OF CIVIL PROCEDURE.

DATE: 11/01/2006

CLERK: KATHY COULTER

BY: *AK*

PO BOX 518
PHENIX CITY AL 36868-0510
(334)298-0516

RETURN ON SERVICE:

- () CERTIFIED MAIL RETURN RECEIPT IN THIS OFFICE ON (DATE) _____
(RETURN RECEIPT HERETO ATTACHED)
- () I CERTIFY THAT I PERSONALLY DELIVERED A COPY OF THE SUMMONS AND COMPLAINT TO _____
IN _____ COUNTY, ALABAMA ON (DATE) _____

DATE

SERVER SIGNATURE

SERVER ADDRESS

TYPE OF PROCESS SERVER

OPERATOR: ANL
PREPARED: 11/01/2006

Nov 10 '06 10:19 P.03

McKenzie Tank Lines Fax: 8505742351

IN THE CIRCUIT COURT OF RUSSELL COUNTY, ALABAMA

CITY OF PHENIX CITY, A)
 A MUNICIPAL CORPORATION,)
 And RUSSELL COUNTY, ALABAMA,)
 For themselves and on behalf of PHENIX)
 CITY FIRE RESCUE, COLUMBU FIRE)
 And EMERGENCY MEDICAL)
 SERVICES, PHENIX CITY POLICE)
 DEPARTMENT, RUSSELL COUNTY)
 SHERIFF DEPARTMENT, RUSSELL)
 COUNTY EMERGENCY)
 MANAGEMENT AGENCY.)

Plaintiffs,)

CIVIL ACTION NO.: CV-06-357

McKENZIE TANK LINES, INC. d/b/a)
 McKENZIE TANK LINES OF)
 ALABAMA, INC.)

Defendant.)

FILED IN OFFICE
 2006 OCT 16 PM 4:31
 CIRCUIT / DIST. COURT
 RUSSELL COUNTY, ALA

COMPLAINT

City of Phenix City, a Municipal Corporation and Russell County, Alabama hereby file this Complaint pursuant to the Superfund Cost Recovery Act, otherwise referred to as "Cerrcla". 42 U.S.C. §9601 et seq. and "Motor Carrier Act of 1980".

I.

Defendant, caused a tanker truck spill on US Highway 280/431 North, in Phenix City, Alabama on November 4, 2004.

II.

As a proximate consequence of said chemical spill, Plaintiffs were required through its various agencies, to clean up the road way.

III.

Plaintiffs incurred a cost of Thirty One Thousand (\$31,000.00) Dollars, plus attorney fees and interest as a proximate consequence of the negligence of Defendant. (See Exhibit "A" attached hereto)

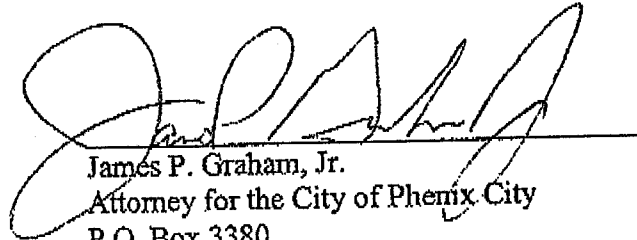
Plaintiffs, pursuant to the aforementioned federal code section, is entitled to recover its costs, including attorney fees for the clean-up of the chemical spill against the at fault party.

IV.

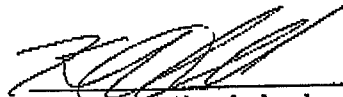
Plaintiffs would show unto the Honorable Court that Defendant, McKenzie Tank Line, Inc. is the at fault party and is responsible for the chemical spill

WHEREFORE, these premises considered, Plaintiffs demand judgment against the Defendant in the sum of Thirty One Thousand (\$31,000.00) Dollars, plus cost and attorney fees.

Respectfully submitted this 16th day of October, 2006.



James P. Graham, Jr.
Attorney for the City of Phenix City
P.O. Box 3380
Phenix City, Alabama 36868
(334)-291-0315
GRA030



Kenneth L. Funderburk
Attorney for Russell County, Alabama
P.O. Box 1268
Phenix City, Alabama 36868
(334)-297-2900
FUN002

PLEASE SERVE DEFENDANT BY CERTIFIED MAIL AT:

McKenzie Tank Lines, Inc.
c/o Its Register Agent of Service
Dawson McGough
631 Diaz Street
Mobile, Alabama 36610-2463

CITY OF PHENIX CITY, ET AL,)
)
 PLAINTIFF(S),)
)
 VS.)
)
 MCKENZIE TANK LINES, INC,)
)
 DEFENDANT(S),)
)
 IN THE CIRCUIT COURT OF
 RUSSELL COUNTY, ALABAMA
 CASE NUMBER CV-06-357

TO: MCKENZIE TANK LINES, INC.
d/b/a MCKENZIE TANK LINES OF ALABAMA, LLC

Service is hereby made upon you by first class mail pursuant to Rule 4 (e) of the ARCP. The attached Petition has been filed by the above-named Plaintiff(s). This is to advise you that the time within which you are to answer shall begin to run on the third day from the postmark date on the envelope.

This the 1st day of November, 2006.

Kathy Coulter *KSC*
Kathy Coulter
Clerk of Circuit Court
Russell County, Alabama